

IN RE: **PETITIONS FOR SPECIAL HEARING *
AND VARIANCE**

(8667 Belair Road) *
11th Election District *
5th Council District *
Laurie Industries Trust and Diajeff Trust, *
c/o Kin Properties, Inc., *Legal Owners* *
Lidl US Operations, LLC, *
Contract Purchaser/Lessee *
Petitioners

BEFORE THE

OFFICE OF

ADMINISTRATIVE HEARINGS

FOR BALTIMORE COUNTY

Case No. 2020-0037-SPHA

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (“OAH”) for consideration of Petitions for Special Hearing and Variance filed on behalf of Laurie Industries Trust and Diajeff Trust, c/o Kin Properties, Inc., legal owners and Lidl US Operations, LLC, contract purchaser/lessee (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit a modified parking plan pursuant to BCZR § 409.12 to allow parking spaces as shown on the plan, and for such other and further relief as may be deemed necessary by the Administrative Law Judge (“ALJ”) for Baltimore County. In addition, a Petition for Variance was filed as follows: From BCZR § 450.4 Attachment 1, 7(b)(VII) to permit a joint identification freestanding sign with a height of 27 ft. in lieu of the permitted 25 ft. (Sign B); from BCZR § 450.4 Attachment 1, 7(b)(V) to permit a joint identification freestanding sign with an area/face of 202.56 sq. ft. in lieu of the permitted 150 sq. ft. (Sign B); from BCZR § 409.A.1 to permit parking spaces in a surface parking facility for a non-residential within 5 ft. of right-of-way line in lieu of the minimum 10 ft. setback; from BCZR § 409.A.1. to permit a perimeter screening of 0.10 ft. in lieu of the required 15 ft. (Landscape Manual Condition B: Parking Lots); from BCZR § 409.6.A.2, if necessary, to permit a retail use totaling 27,406 sq. ft. of gross floor area with 127 off-street parking spaces in lieu of the required 138 spaces, and for such other and further relief as may be required by the ALJ for

Baltimore County. A site plan prepared by Chris Armstrong, P.E., with Bohler Engineering was marked and accepted into evidence as Petitioners' Exhibit 1. Mr. Armstrong was accepted as an expert in land use and design, engineering, and in the BCZR.

Lawrence E. Schmidt, Esq. appeared on behalf of the Petitioners. The Petition was advertised and posted as required by the BCZR. Due to the meeting restrictions related to the Covid 19 pandemic a virtual on-line hearing was held via WebEx in lieu of an in-person hearing. There were no protestants or interested persons in attendance. A Zoning Advisory Committee ("ZAC") comment was received from the Department of Planning ("DOP") and indicated no objection but suggested landscaping recommendations.

The property is approximately 2.07 acres and is zoned BL.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

The parcel in question is the anchor property in the middle of a commercial strip mall. It is the site of the former Mars supermarket. A new supermarket chain, LIDL, proposes to move in and operate in essentially the same manner as Mars. The parcel is irregularly shaped and bounded on two sides by other commercial properties and their associated parking and improvements. The parcel is bounded at the rear by residences. The loading dock and access thereto are too narrow to provide for the prescribed landscape buffer from the residences. However, there is mature vegetative screening as well as fencing that provide a good visual screen between the rear of the store and the rear of these residences. The property is therefore unique. If the Regulations were

strictly interpreted, Petitioners would experience a practical difficulty because they would be unable to operate their supermarket at this location. Finally, I find that all the requested variances can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the absence of County and/or community opposition. The unrebutted testimony was that there is more than adequate parking at the site, and that the signage will not increase in size, nor differ in style, from the existing signage.

In the alternative, I also find that the modified parking plan requested under BCZR § 409.12 is also warranted and can be granted within the spirit and intent of the BCZR. In view of the evidence I find that the Petitioner would suffer an undue hardship if it were made to strictly comply with the parking regulations; and, as noted above, the evidence established that there is more than adequate parking at the site.

THEREFORE, IT IS ORDERED this 30th day of **June, 2020**, by this Administrative Law Judge, that the Petition for Special Hearing seeking relief pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to permit a modified parking plan pursuant to BCZR § 409.12 to allow parking spaces as shown on the plan, be and hereby is GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance seeking relief as follows: From BCZR § 450.4 Attachment 1, 7(b)(VII) to permit a joint identification freestanding sign with a height of 27 ft. in lieu of the permitted 25 ft. (Sign B); from BCZR § 450.4 Attachment 1, 7(b)(V) to permit a joint identification freestanding sign with an area/face of 202.56 sq. ft. in lieu of the permitted 150 sq. ft. (Sign B); from BCZR § 409.A.1 to permit a parking space in a surface parking facility for a non-residential within 5 ft. of right-of-way line in lieu of the minimum 10 ft. setback; from BCZR § 409.A.1. to permit a perimeter screening of 0.10 ft. in lieu of the required

15 ft. (Landscape Manual Condition B: Parking Lots); from BCZR § 409.6.A.2, if necessary, to permit a retail use totaling 27,406 sq. ft. of gross floor area with 127 off-street parking spaces in lieu of the required 138 spaces, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at its own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

_____.Signed_____
PAUL M. MAYHEW
Managing Administrative Law Judge
for Baltimore County

PMM/dlw